

Message Text

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ACTION EB-07

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 DOTE-00 INR-07 NSAE-00 FAA-00 L-02 SS-15 H-02 /048 W

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FM AMEMBASSY BONN

TO SECSTATE WASHDC 9224

INFO USMISSION USBERLIN

AMEMBASSY LONDON

AMEMBASSY PARIS

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E.O. 11652: N/A

TAGS: PFOR, EAIR, WB, GW, US

SUBJECT: PAA SEEKS COMPENSATION FOR LOSSES DUE TO FRG

AIR TRAFFIC CONTROLLERS SLOWDOWN

1. SUMMARY: EMB OFFS ACCOMPANIED PAA REPS TO MEETING WITH FRG TRANSPORT MINISTRY (FMT) OFFICIALS ON THE AIRLINE'S CLAIM FOR COMPENSATION OF LOSSES ON THE BERLIN SERVICES RESULTING FROM THE 1973 AIR TRAFFIC CONTROLLERS SLOWDOWN. PAA BASES THE IGS PORTION OF ITS CLAIM ON FRG OBLIGATIONS ARISING FROM THE CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION. REMARKS MADE BY FMT OFFICIALS DURING THE MEETING SUGGEST THE FRG HAS ADOPTED A STRONG POSITION AGAINST PAYING DAMAGES TO ANY CARRIER, GERMAN OR FOREIGN, AFFECTED BY THE SLOWDOWN. THE EMBASSY IS NOT IN A POSITION TO FULLY EVALUATE PAA'S LEGAL PRESENTATION AND HAS FOR THE PRESENT DEMONSTRATED INTEREST IN THE CLAIM WHILE AVOIDING IDENTIFYING WITH ANY SPECIFIC LEGAL ARGUMENT. ACTION REQUESTED: DEPARTMENT'S VIEWS. END SUMMARY.

2. DURING A CALL ON THE AMB. PAA DIRECTOR FOR GERMANY RUNNETTE REQUESTED EMBASSY SUPPORT IN PAA'S EFFORTS TO RECOVER FROM THE FRG CLOSE TO US \$5.5 MILLION IN LOST

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REVENUES AND ADDITIONAL COSTS ON THE IGS CAUSED BY THE

1973 GERMAN AIR TRAFFIC CONTROLLERS SLOWDOWN. THE ESTIMATED US \$400,000 LOST ON PAA'S INTERNATIONAL SERVICES WAS BEING TREATED SEPARATELY AND, INTER ALIA, AWAITED THE FINAL OUTCOME OF COURT PROCEEDINGS AGAINST THE FRG BROUGHT BY A W. GERMAN CARRIER IN KIEL.

3. RUNNETTE SAID THAT PAA HAD SUBMITTED A MEMORANDUM ON THE SUBJECT TO THE FMT LAST FALL BASING ITS RESTITUTION CLAIM ON FRG OBLIGATIONS FLOWING FROM THE CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION, 1952 (CHAPTER 12, ARTICLE 5). SPECIFICALLY, PAA CITES THE FRG'S FAILURE TO MEET ITS COMMITMENT TO PROVIDE "UNLIMITED AND UNIMPEDED PASSAGE THROUGH ITS AIRSPACE" TO AND FROM BERLIN AS A RESULT OF THE CONTROLLERS SLOWDOWN. THE MEMORANDUM FURTHER REFERS TO FRG LAW 839 WHICH PAA BELIEVES PROVIDES A SOUND BASIS FOR RESTITUTION OF LOSSES ON ITS INTERNATIONAL SERVICES AND MAKES THE POINT THAT WHILE IGS LOSSES COULD BE CLAIMED UNDER THE SAME LAW PAA HAS CHOSEN TO SEEK SETTLEMENT OF ITS BERLIN RELATED DAMAGES ADMINISTRATIVELY.

4. RUNNETTE GAVE US A COPY OF PAA'S MEMORANDUM IN MID FEBRUARY REQUESTING THAT EMBASSY REPS ACCOMPANY HIM IN A CALL ON FRG TRANSPORT MINISTRY (FMT) ASST. SECRETARY FUCHS (ADMINISTRATION) TO OPEN DISCUSSIONS ON THE IGS PORTION OF PAA'S CLAIM. ON FIRST READING THE MEMORANDUM GAVE THE IMPRESSION OF BEING HASTILY FORMULATED (IT CONTAINED SEVERAL MISTAKEN CITATIONS RELATING TO THE BONN CONVENTIONS) WITH A NUMBER OF OVER-BLOWN AND QUESTIONABLE POLITICAL PRONOUNCEMENTS ON BERLIN IRRELEVANT TO THE CLAIM. GIVEN OUR RESERVATIONS ON THE MEMORANDUM, WE TOLD RUNNETTE THE EMBASSY WOULD, FOR THE PRESENT AVOID ASSOCIATING ITSELF WITH ANY SPECIFIC ARGUMENT IN THE MEMO BUT WOULD BY HAVING EMBASSY REPS ACCOMPANY RUNNETTE ON HIS CALL DEMONSTRATE INTEREST IN PAA'S CLAIM.

5. EMB CAA AND ASST. CAA, THEREFORE, ACCOMPANIED RUNNETTE TO A RECENT MEETING WITH FUCHS AND FMT LEGAL ADVISOR KELLER. FUCHS, WHO HAD RECENTLY TAKEN OVER HIS POST, SAID HE HAD NOT HAD TIME TO STUDY PAA'S ARGUMENTS CAREFULLY.

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FULLY BUT WISHED TO MAKE CLEAR THAT HE COULD NOT ACCEPT ANY SUGGESTION THAT THE DECLINE IN IGS PASSENGER VOLUME IN 1973 WAS DUE IN LARGE MEASURE TO THE CONTROLLERS SLOWDOWN. RUNNETTE COUNTERED THAT PAA HAD BEEN ABLE TO BREAK OUT THE PORTION OF THE OVERALL TRAFFIC DECLINE ATTRIBUTABLE TO THE SLOWDOWN AND WOULD PROVIDE SUPPORTING DATA. RE PAA'S LEGAL ARGUMENTATION, KELLER SAID THE FMT TOOK THE POSITION THAT THE FRG'S OBLIGATIONS VIS-A-VIS

THE IGS UNDER THE CONVENTION WERE TO THE ALLIED GOVERNMENTS AND NOT TO INDIVIDUAL AIRLINES OPERATING ON THE IGS. IN THIS CONTEXT, KELLER DREW A PARALLEL BETWEEN THE PROBLEM AT ISSUE AND THE LOSSES SUFFERED BY GERMAN

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SHIPPERS ON THE RHINE RIVER COMPLEX DUE TO A STRIKE BY FRENCH CANAL WORKERS. ALTHOUGH AN INTERNATIONAL AGREEMENT EXISTED GUARANTEEING UNIMPEDED PASSAGE THROUGH THE RHINE WATERWAY SYSTEM, GERMAN SHIPPERS WERE NOT COMPENSATED FOR THEIR LOSSES SINCE THE FRG ELECTED NOT TO MAKE A GOVERNMENT TO GOVERNMENT ISSUE OF THE MATTER.

6. IN KELLER'S VIEW, PAA'S IGS CLAIM HAD TO BE TREATED UNDER THE SAME LEGAL CRITERIA AS THE AIRLINE'S LOSSES ON ITS INTERNATIONAL SERVICES, I.E. UNDER FEDERAL LAW 839. IN THIS CONNECTION, HOWEVER, KELLER POINTED OUT THAT PAA - OR ANY OTHER FOREIGN CARRIER - WOULD BE ELIGIBLE FOR RESTITUTION ONLY IF IT COULD BE SHOWN THAT GERMAN CARRIERS WOULD BE ELIGIBLE FOR THE SAME TREATMENT BY THE GOVERNMENT OF THE COUNTRY WHERE THE AIRLINE INVOLVED WAS REGISTERED. RE THE SUCCESSFUL COURT PROCEEDINGS BROUGHT

AGAINST THE FRG IN KIEL FOR COMPENSATION BY A W. GERMAN CARRIER, FUCHS SAID THE GOVERNMENT HAD ALREADY APPEALED THE DECISION AND FOR THE PRESENT HAD NO INTENTION OF ACCEPTING ANY LIABILITY FOR THE CONTROLLERS SLOWDOWN AS A RESULT OF THE COURT CASE.

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7. COMMENT: AS FAR AS WE CAN DETERMINE NEITHER BA NOR AIR FRANCE HAS APPROACHED THE FRG ON THIS MATTER. THE EMBASSY IS NOT IN A POSITION TO FULLY EVALUATE THE VARIOUS LEGAL GROUNDS UPON WHICH PAA IS BASING ITS CLAIM FOR COMPENSATION. IT APPEARS CLEAR, HOWEVER, FROM KELLER'S REMARKS THAT THE FMT IS ALREADY RESOLVED NOT TO PAY DAMAGES TO ANY OF THE CARRIERS AFFECTED BY THE CONTROLLERS SLOWDOWN. MOREOVER, HIS POINTED REFERENCE TO THE RHINE RIVER EXAMPLE SUGGESTS THE FRG WOULD NOT BE RECEPTIVE TO CLAIMS BROUGHT BY OTHER GOVERNMENTS ON BEHALF OF THEIR CARRIERS. RUNNETTE HAS TOLD US THAT PAA HAS BROUGHT THE PROBLEM TO THE DEPARTMENT'S ATTENTION. WE WILL KEEP IN CLOSE TOUCH WITH PAA ON THIS ISSUE AND WILL REPORT FURTHER BONN DEVELOPMENTS. ACTION REQUESTED: DEPARTMENT'S VIEWS.
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